whole proceedings will inevitably get before the jury to enable them to understand the answers given.[7] If a proposal were made to the people of this state to give the defendant an opportunity to speak on being brought before the magistrate immediately after his arrest,[8] it would be strenuously opposed as a violation of the rights of the accused person. But a decision, as in the principal case, will pass unquestioned, although it gives an added advantage to the extra-legal, secret, unprotected inquisition in the sheriff's or district attorney's office. It will be no longer sound advice for a lawyer to advise his client to say nothing. If this does not compel a defendant to criminate himself, what would?

A. M. K.

FIXTURES: PRIORITY BETWEEN REAL ESTATE MORTGAGEE AND CONDITIONAL SELLER OF CHATTELS—In commenting upon the case of *Oakland Bank of Savings v. California Pressed Brick Company*[1] in the last issue of the California Law Review,[2] the suggestion was made that by protecting the conditional seller of a chattel to be made a fixture against a later mortgagee of the realty, if the contract is recorded in such a way as to describe the property to which the chattel was to be affixed, a fair result for both parties might be reached. It has since been discovered that this is virtually the rule prescribed by the Uniform Conditional Sales Act,[3] the draft of which was approved in 1918, and although it has been adopted in only two jurisdictions,[4] will undoubtedly be accepted by many others, in accordance with the plans of the Commissioners on Uniform State Laws. *H. A. B.*

HUSBAND AND WIFE: RIGHTS OF BIGAMOUS WIFE IN COMMUNITY PROPERTY—Has a de facto wife any rights in the community property? In *Schneider v. Schneider*[1] the California court answered this question in the affirmative. In this case the court decreed distribution of the "community property" of a "marriage" void by reason of the fact that the woman had a husband living at the time the union occurred. This result startles the theorist steeped in the learning of the common law, and it may well shock the California practitioner, for the effect of the principal case is to give full marital property rights to one who under the doctrines

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[7] People v. Melandrez (1906) 4 Cal. App. 396, 88 Pac. 372; Commonwealth v. Robinson (1896) 165 Mass. 426, 43 N. E. 121.
[8] 5 Wigmore on Evidence, § 851.

[1] (July 9, 1920) 60 Cal. Dec. 51.
[2] 8 California Law Review, 442.
[3] Uniform Conditional Sales Act, § 7; Terry, Uniform State Laws, 565.
[4] New Jersey (1919), South Dakota (1919).

[1] (July 26, 1920) 60 Cal. Dec. 94.

of California law has committed bigamy.[2] An earlier case,[3] however, in effect anticipated the rule of the Schneider case, which is also well established in other community property jurisdictions in the so-called "putative marriage" doctrine.[4]

This doctrine, in common with the community property system, is a heritage of the civil law, and accordingly is to be found in force in jurisdictions in which the influence of French and Spanish law has been felt. Quebec and Louisiana—jurisdictions where civil law influences have maintained their vigor—have incorporated bodily into their statutes[5] section 201 of the Code Napoleon. This section states the doctrine of the putative marriage in these words:[6] "A marriage although declared null, produces nevertheless civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith." Other states influenced by the civil law recognize the doctrine, without the authority of a statutory declaration.[7]

The putative marriage is an equitable corollary of the community theory of marital property rights. Under the community property theory the interests of the parties in the marriage prop-

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[2] Cal. Pen. Code, § 281. For an elaborate discussion of the bigamy statute in California, see article in 7 California Law Review, 1; also criticism of the leading case of People v. Hartman (1900) 130 Cal. 487, 62 Pac. 823, by Professor Orrin K. McMurray in 3 California Law Review, 441, 452.

[3] Coats v. Coats (1911) 160 Cal. 671, 118 Pac. 441, 36 L. R. A. (N. S.) 844. An early unofficial case decided by the Probate Court of San Francisco, Estate of Winters (1877) Myr. Prob. Rep. 131, which reached a contrary result was ignored by the court in both the principal case and in Coats v. Coats.

[4] For the putative marriage doctrine generally, see note in Ann. Cas. 1913A 236.

[5] Civ. Code of Lower Canada (1918) § 163; Rev. Civ. Code of Louisiana (1912) Arts. 117, 118. The putative marriage doctrine came into Louisiana originally through Spanish law. See interesting article by Professor Wigmore, "Louisiana: the Story of its Legal System," in 1 Southern Law Quarterly, 1, reprinted from 22 American Law Review, 890; also, Smith v. Smith (1891) 43 La. Ann. 1140, 1150, 10 So. 248; Patton v. Philadelphia (1846) 1 La. Ann. 98.

[6] "Le mariage qui a été déclaré nul produit néanmoins des effets civils, tant a l'égard des époux qu'à l'égard des enfants lorsqu'il a été contracté de bonne foi." Code Civil Annoté (Boyer, 1902) § 201. This statutory rule is well established law in both Quebec and Louisiana. Morin v. Corporation des Pilotes (1882) 8 Quebec 222; Succession of Benton (1901) 106 La. 494, 31 So. 123, 59 L. R. A. 135.

[7] The putative marriage came into Texas through the medium of Spanish law. Smith v. Smith (1846) 1 Tex. 621, 46 Am. Dec. 121. The adoption of the common law cast doubt upon the doctrine in that state, but it is now settled that the putative marriage is recognized. Chapman v. Chapman (1895) 11 Tex. Civ. App. 392, 32 S. W. 564, reversed upon rehearing (1897) 16 Tex. Civ. App. 382, 41 S. W. 533. Also, Buckley v. Buckley (1908) 50 Wash. 213, 96 Pac. 1079, 126 Am. St. Rep. 900, and semble, Barnett v. Barnett (1897) 9 N. M. 205, 50 Pac. 337; Strong v. Eakin (1901) 11 N. M. 107, 66 Pac. 539. The dictum in the principal case (supra, n. 1) that putative marriages may obtain in New Mexico is doubtless based upon the rule of these cases that the Spanish-Mexican law of community property became the law of that territory and has continued in force as such except where modified by statute.

erty partake of the nature of a partnership.[8] The parties to the marriage are, roughly speaking, partners as to the joint property. Therefore, in effect, two jural concepts are involved—one, the marriage status, the other, a contract underlying the rights of the parties in the community property. It is clear that different considerations should determine the validity and legal effects of each. In other words, while the state will withhold its consent from a bigamous union, there is no reason inherent in this fact which should cause it to refuse to recognize and enforce rights arising out of the collateral contract which, under the community theory, governs the property rights of the parties. Certainly rights in the joint property in their nature equitable arise out of the union in favor of a party who in good faith has entered into it. The putative marriage doctrine rightly makes good faith the condition upon which acquisition of marital property rights depends.[9]

The common law, however, is uninfluenced by equitable considerations in its disposition of the question and inquires only as to the existence or non-existence of the marriage status.[10] From the point of view of the common law, the wife's property rights find their basis in the husband's duty of support. This duty of support gives the wife rights enforceable against the husband's estate both during the marriage and after its dissolution.[11] Since a void marriage is one that has in contemplation of strict com-

[8] Lyman v. Vorwerk (1910) 13 Cal. App. 507, 110 Pac. 355; Kohny v. Dunbar (1912) 21 Idaho 258, 121 Pac. 544, 39 L. R. A. (N. S.) 1107, Ann. Cas. 1913D 492. The numerous holdings and statements of courts of this and other jurisdictions to the effect that the wife's right in the community property is a mere expectancy, Spreckels v. Spreckels (1897) 116 Cal. 339, 48 Pac. 228, 58 Am. St. Rep. 170, 36 L. R. A. 497; Packard v. Arrelanes (1861) 17 Cal. 525, while the husband has legal title and power of disposal, deal merely with the scheme of government of the community property and do not affect in the least the fact that the partnership idea underlies the community property system. See the learned exposition of the community property theory under both French and Spanish law in the opinion of Chief Justice White in Garrozi v. Dastas (1907) 204 U. S. 64, 51 L. Ed. 369, 27 Sup. Ct. Rep. 224, also Schmidt, The Law of Spain and Mexico (1851) Arts. 43-55.

[9] Baudry-Lacantinerie: Précis de Droit Civil, Vol. I, pp. 258-261, 9 Répertoire Encyclopédique du Droit Français, 414; Monnier v. Contejean (1893) 45 La. Ann. 419, 12 So. 623.

[10] DeFrance v. Johnson (1886) 26 Fed. 891. See 68 Am. St. Rep. 372 and Ann. Cas. 1914B 851 for notes.

[11] See generally 19 C. J. title Divorce, Bouvier's Law Dictionary, title Alimony. The wife's right to support survives the dissolution of the marriage by death of the husband generally in the form of dower. Upon divorce alimony payable out of the husband's estate is the usual form in which this right is recognized, although in some states statutes have allowed dower upon divorce, Davol v. Howland (1817) 14 Mass. 219; Glaser v. Kaiser (1908) 103 Minn. 241, 114 N. W. 762; Orth v. Orth (1888) 69 Mich. 158, 37 N. W. 67; Percival v. Percival (1885) 56 Mich. 297, 22 N. W. 807, while statutes of others allow the wife her dower rights upon the husband's death, unaffected by the divorce, McAllister v. Dexter R. R. Co. (1910) 106 Me. 371, 76 Atl. 891, 29 L. R. A. (N. S.) 726, 21 Ann. Cas. 486; Julier v. Julier (1900) 62 Ohio St. 90, 56 N. E. 661, 78 Am. St. Rep. 697; Tatro v. Tatro (1885) 18 Neb. 395, 25 N. W. 571, 53 Am. Rep. 820.

mon law theory never existed, the man has never owed a duty of support, and the woman, although an innocent party, is consequently without right.[12]

It is difficult to see why courts have felt themselves to be helpless before this rule which, admittedly, is capable of working great injustice. But few courts have attempted to modify its relentless application, although such modification might well have been made upon principles of equity or quasi-contract.[13]

It is interesting to note that the doctrine under consideration was originally a part of the community property scheme of rights as found in Spanish law,[14] and, although omitted from the codification of the community property system in this state has found its way into our law through the more roundabout channels of persuasive authority and principle. *W. C. B.*

LIMITATION OF ACTIONS: INJURIES TO LAND UNDER CALIFORNIA STATUTES—That the common-law actions, although abolished in California,[1] still play a part in our law is shown by the cases of *Brush v. Southern Pacific Company*[2] and *Porter v. City of Los Angeles,*[3] decided in the spring of the present year. In each case the court held that the three-year limitation in subdivision 2 of section 338 of the Code of Civil Procedure[4] was applicable only to what were strictly actions for trespass at common law, and that actions for invasions of rights in real property for which at common law the remedy was trespass on the case,[5] are covered by the two-year limitation in subdivision 1 of section 339 of the Code of Civil Procedure,[6] applicable generally to tort actions.

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[12] Supra, n. 10.

[13] Werner v. Werner (1898) 59 Kan. 399, 53 Pac. 127, 41 L. R. A. 349, 68 Am. St. Rep. 372; Lea v. Lea (1889) 104 N. C. 603, 10 S. E. 488, 17 Am. St. Rep. 692. The current of authority, however, supporting the proposition that equity will relieve in favor of innocent persons who have entered into a void marriage is feeble in common law jurisdictions. See notes in 68 Am. St. Rep. 375 (to the case of Werner v. Werner, supra), and in Ann. Cas. 1914B 851, and cases cited therein. Some courts have allowed the woman to recover for services rendered during cohabitation (Higgins v. Breen (1845) 9 Mo. 497, semble; Schmidt v. Schneider (1900) 109 Ga. 628, 35 S. E. 145). These cases are for the most part early cases and there is authority contra: Cooper v. Cooper (1888) 147 Mass. 370, 17 N. E. 892, 9 Am. St. Rep. 712. When the woman has been induced to enter into the union by fraud, there is strong authority that a tort action will lie in her favor. Morrill v. Palmer (1895) 68 Vt. 1, 33 Atl. 829, 33 L. R. A. 411, and note thereto which collects the authorities.

[14] Smith v. Smith (Texas) supra, n. 6; Patton v. Philadelphia; Smith v. Smith (La.) supra, n. 4.

[1] Cal. Code Civ. Proc. § 320.

[2] (Apr. 9, 1920) 31 Cal. App. Dec. 1023.

[3] (Mar. 26, 1920) 59 Cal. Dec. 373, 189 Pac. 105

[4] Cal. Code Civ. Proc. § 338, subdiv. 2, reads: "Within three years: (2) An action for trespass upon real property."

[5] Supra, n. 3.

[6] Cal. Code Civ. Proc. § 339, subdiv. 1, reads: "Action must be within two years: (1) an action upon a contract, obligation, or liability not founded upon an instrument of writing. . . . ."